STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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December 6, 1989

The Honorable R. J. Sanford
Ventura County Assessor
Ventura County
Government Center
800 South Victoria Avenue
Ventura, CA 93009

Attention: Mr. James E. Dodd

This is in response to your letter of October 16, 1989 to Mr. Richard Ochsner in which you request our opinion with respect to the property tax matter set forth in your letter as follows:

> At this time, the assessor is involved in an assessment appeals case with a regional shopping center. The issue under appeal is the assessor's valuation of the tenant improvements. The value of the land and building improvements is not in question. The assessor has assessed the tenant improvements to the landlord on the secured roll. The assessor does this because the lease agreement provides that the landlord obtains title to the tenant improvements upon termination of the lease.
>
> There is a possibility the landlord may file a statement of separate ownership under section 2188.2. If the landlord owns the land and structures and the tenant owns the tenant improvements and a request for separate assessment is filed under this section, will the assessor be forced to assess the land and structures to the landlord and the tenant improvements to the tenant?
>
> The question is whether or not this section is mandatory or permissive on the part of the assessor. If the statement is filed , can the assessor ignore it? Can section 2188.2 be deemed to apply to the case of tenant improvements installed by a tenant in a shopping center?

Revenue and Taxation Code* section 2188.2 provides in relevant part:

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*All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

> Whenever improvements are owned by a person other than the owner of the land on which they are located, the owner of the improvements or the owner of the land may file with the assessor a written statement before the lien date attesting to their separate ownership, in which event the land and improvements shall not be assessed to the same assessee.

Section 16 provides that "[s]hall" is mandatory and "may" is permissive. Thus, use of the language "land and improvements shall not be assessed to the same assessee" makes it reasonably clear that section 2188.2 is mandatory rather than permissive when a written statement attesting to separate ownership is filed with the assessor. This conclusion also accords with general rules of statutory construction. See 58 Cal.Jur.3d, Statutes section 147. Moreover, the courts have held that section 2188.2 has the effect of "requiring assessment to the owner of improvements, rather than the landowner, if and when a statement of separate ownership is filed." Valley Fair Fashions, Inc. v. Valley Fair (1966) 245 Cal.App.2d 614, 617; County of Ventura v. Channel Islands State Bank (1967) 251 Cal.App.2d 240, 245.

In the latter case, a bank leased land and improvements from the owner and installed certain improvements, i.e., a sign and a night depository which were owned by the bank. In upholding the validity of a separate assessment on the lessee improvements to the bank, the court indicated that although no statement was filed under section 2188.2 both parties had a right to do so.

Based on the foregoing, we are of the opinion that section 2188.2 is mandatory. Therefore, if a statement is filed under section 2188.2, the assessor cannot ignore it. Further, we are of the opinion that section 2188.2 applies in a case where the landlord owns the land and structures and the tenant owns certain tenant installed improvements.

Very truly yours,

Eric F. Eisenlauer

Eric F. Eisenlauer
Tax Counsel

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cc: Mr. John W. Hagerty
Mr. Verne Walton